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IN THE
COURT OF APPEALS OF INDIANA

MARRIBETH HALL, MAXINE COX and DARLENE KRESS, Appellants-Defendants,	)	
vs.	)	No. 64A04-0606-CV-340
ROBERT HALL, Individually and In His Capacity as the Executor of the ESTATE OF RUTH A. HALL, deceased, Appellee-Plaintiff.	)	
VANESSA L. LOWRY UNTERREINER and SANDRA K. VUKO, Defendants.[1]	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable William E. Alexa, Judge
Cause No. 64D02-0508-PL-6451

February 2, 2007

[1] Defendants Vanessa L. Lowry Unterreiner and Sandra K. Vuko are not seeking relief on appeal and have not filed a brief as Appellants or Appellees. Pursuant to Indiana Appellate Rule 17(A), however, parties of record in the trial court are parties on appeal.

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellants-Defendants Merribeth Hall ("Merribeth"), Maxine Cox ("Cox"), and Darlene Kress ("Kress") (collectively "Appellants") appeal the trial court's denial of their Motion to Correct Error, which sought relief from the trial court's order granting summary judgment in favor of Appellee-Plaintiff Robert Hall ("Robert"), individually, and as executor of the Estate of Ruth A. Hall ("Estate").[2] We affirm.

Issue

The Appellants raise three issues, which we consolidate and restate as whether the trial court erred in granting summary judgment in favor of Robert and the Estate.

Facts and Procedural History

On June 26, 1984, Ruth A. Hall ("Ruth") executed a Last Will and Testament ("1984 Will") that devised, in relevant part, twenty acres in Porter County to Kress ("Parcel 1"), a home in Hebron to Cox ("Parcel 2"), eighty acres in Porter County to Merribeth and Jesse Lee Hall ("Jesse") as joint tenants ("Parcel 3"), a home in Valparaiso to Merribeth ("Parcel 4"), a garage and the surrounding land to Merribeth ("Parcel 5"), and a wall clock previously owned by Ruth's grandfather to Robert. Kress, Cox, Merribeth, Jesse, and Robert are Ruth's children.

On July 19, 1995, Ruth executed a General Durable Power of Attorney ("1995 Power of Attorney") appointing Merribeth to serve as her attorney-in-fact. This document provided

Merribeth in part with general authority with respect to real property transactions, tangible personal property transactions, beneficiary transactions, and gift transactions. The authority in regards to gift transactions, however, was limited:

> [T]his authority shall exclude the power to make gifts to any person other than my spouse in excess of the amount excluded from gifts under §2503(b) of the Internal Revenue Code of 1986, as amended, or any successor thereto (I.C. 30-5-5-9).

Appellants' Appendix at 33. On November 28, 1995, Merribeth prepared and executed seven quitclaim deeds transferring title of Parcel 1 to Kress, Parcel 2 to Cox, Parcel 3 divided in half between Jesse and Merribeth,[3] Parcel 4 to Merribeth, Parcel 5 to Jesse, and thirteen acres in Porter County to Robert ("Parcel 6"). These quitclaim deeds were only signed by Merribeth as Ruth's attorney-in-fact.

On April 2, 1996, Ruth executed another Last Will and Testament ("1996 Will") that revoked all previous wills and codicils and devised Parcel 1 to Kress, Parcel 2 to be divided among Merribeth (20 acres), Jesse (20 acres), and Robert (40 acres). Due to his "providing for [Ruth's] care and comfort prior to [her] death", Robert was designated to receive the remainder of Ruth's estate. The 1996 Will also appointed Robert as Ruth's personal representative. That same day, Ruth executed a Revocation of Power of Attorney, effectively revoking such authority in Merribeth, and executed a Power of Attorney ("1996 Power of Attorney") appointing Robert.

The quitclaim deeds for Parcels 1, 2, Merribeth's forty acres of Parcel 3, and 4 were recorded later, and the quitclaim deeds for Parcels 5, 6, and Jesse's portion of Parcel 3 were

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[2] Robert has since been removed as executor of the Estate and the current executor is John P. Shanahan.
[3] Two separate quitclaims deeds were executed to transfer each of the forty acres.

delivered to Jesse and Robert's attorney.

Ruth died on November 12, 2003, and the Porter Superior Court admitted her 1996 Will to probate the following day and appointed Robert as executor of the estate. On August 3, 2005, Robert, individually and in his capacity as the executor of the Estate, filed this action to quiet title in Parcels 1-6 and also requested damages and attorney's fees. In his complaint, Robert alleged that the quitclaim deeds were void because their execution exceeded Merribeth's powers as Ruth's attorney-in-fact and was contrary to Merribeth's fiduciary responsibility as an agent of Ruth, giving rise to a presumption of fraud and undue influence. Cox, Merribeth, and Kress each filed an Answer denying the quitclaims were invalid, and Merribeth and Kress asserted Cross-Complaints asserting title to the properties described was properly vested in Cox, Merribeth, and Kress.

On December 5, 2005, Robert filed a Motion for Summary Judgment seeking partial summary judgment deeming the quitclaim deeds void and vesting title of the properties in the name of the Estate of Ruth A. Hall. On January 20, 2006, Merribeth and Kress filed a Defendants' Motion to Oppose Summary Judgment asserting there are genuine issues of material fact precluding summary judgment. Merribeth's designated evidence included an affidavit executed by Merribeth describing the circumstances surrounding the execution of the quitclaim deeds. On February 15, 2006, the trial court held a hearing on all of the pending motions. In its order, the trial court found that there were no issues of genuine material fact, and without explanation, granted Robert's motion for partial summary judgment, setting aside the quitclaim deeds executed by Merribeth and vesting title of the properties in the Estate.

On March 15, 2006, Robert filed a Motion for Entry of Final Judgment pursuant to Indiana Trial Rules 56(C) and 54(B), which was granted on the same day. Subsequently, the Appellants filed a Motion to Correct Error. After holding a hearing, the trial court denied the motion. This appeal ensued.

Discussion

I. Standard of Review

On appeal, the Appellants argue that the trial court abused its discretion in denying their Motion to Correct Error because there are genuine issues of material fact precluding an entry of summary judgment. Pursuant to Rule 56(C) of the Indiana Rules of Trial Procedure, summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue. Bilimoria Computer Systems, LLC v. America Online, Inc., 829 N.E.2d 150, 155 (Ind. Ct. App. 2005). Our standard of review for summary judgment is the same as that used in the trial court. Harco, Inc. v. Plainfield Interstate Family Dining Assoc., 758 N.E.2d 931, 937 (Ind. Ct. App. 2001). Neither the trial court nor the reviewing court may look beyond the evidence specifically designated to the trial court. Id. We do not reweigh the evidence. Allen v. First Nat. Bank of Monterey, 845 N.E.2d 1082, 1084 (Ind. Ct. App. 2006). Instead, we consider the facts in the light most favorable to the nonmovant. Id. We will affirm the denial of summary judgment if it is sustainable on any legal theory or basis found in the evidentiary matter designated to the trial court. Ford v. Culp Custom Homes, Inc., 731

N.E.2d 468, 472 (Ind. Ct. App. 2000), trans. denied.

II. Analysis

On appeal, the Appellants argue that summary judgment was improperly granted due to the existence of issues of material fact. Specifically, the Appellants argue that Merribeth had the authority under the 1995 Power of Attorney to execute the quitclaim deeds and that there is not a presumption of fraud or undue influence regarding the deed transactions because Merribeth did not receive an advantage from executing the deeds. Prior to addressing the issues, we must address whether the affidavit of Merribeth can be considered in our review based on Indiana's Dead Man Statute.

A. Dead Man Statute

Indiana Code Section 34-45-2-4 applies when (1) an executor or administrator is a party, (2) matters that occurred during the decedent's lifetime are involved, and (3) a judgment or allowance may be rendered for or against the estate represented by the executor or administrator. In such situations, a person is not a competent witness if he or she is a necessary party to the issue or record and his or her interest is adverse to the estate. Id.

In the case at hand, the executor of the Estate of Ruth A. Hall is a party, the matter of the case involves the execution of deeds by Ruth's attorney-in-fact during Ruth's lifetime, and a judgment could be rendered for or against the estate as to who has title to the property in question. Furthermore, Merribeth is a necessary party to the issue of who holds title because she executed the deeds and was the recipient of some of the property. Finally, Merribeth's interest is adverse to the Estate as she contends that she and her siblings are the owners of the deeded property rather than the Estate. Therefore, Merribeth is not a

competent witness and her affidavit is not part of the materials that are the foundation of our review.

B. Authority to Execute Deeds

The Appellants first argue that Merribeth had the authority under the 1995 Power of Attorney to execute the quitclaim deeds, because they were not gifts but transactions of property for valid consideration. The determination as to whether the quitclaim deeds represented a gift or a contract is determinative of whether Merribeth had the authority under the 1995 Power of Attorney to effectuate the deeds. The 1995 Power of Attorney limited the size of gifts to the amount excluded from gifts under §2503(b) of the Internal Revenue Code of 1986, which is ten thousand dollars. All of the properties at issue exceed this threshold. However, there was no such monetary limitation in the grant of general authority with respect to real property transactions, governed by Indiana Code Section 30-5-5-2.

In support of their argument that the quitclaim deeds were non-gift real property transactions, the Appellants point out that the quitclaim deeds recite consideration of "One Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged." Appellant's App. At 111-17. Robert contends that this recital of nominal consideration does not provide evidence that the property was not gifted. To survive the summary judgment motion, the Appellants must bring forth some evidence tending to show there was sufficient, rather than nominal consideration given for the quitclaim deeds, raising a genuine issue of material fact as to whether the quitclaim deeds were gifts or contractual transactions. However, the Appellants have failed to do so.

Consideration consists of a bargained-for exchange. In re Estate of Von Wendesse,

618 N.E.2d 1332, 1335 (Ind. Ct. App. 1993), trans. denied. It may take the form of a benefit accruing to the promisor or a detriment to the promisee. Id.

According to the Appellants, the "other good and valuable consideration" was the children allowing Ruth to continue to live on and collect rents from the properties after title to the properties were transferred to the children. However, under this advanced scenario, the promisor, Ruth, does not accrue a benefit from the alleged consideration, nor are the promisees, Ruth's children, subject to a detriment. Prior to the execution of the quitclaim deeds, Ruth lived on one of the properties and collected rent from others. This did not change upon the execution of the deeds. Thus, Ruth accrued no benefit from the purported contractual transactions. Furthermore, there was no detriment to the Appellants or any of Ruth's children receiving title to any of the properties, because they did not forgo a prior held interest in land or property in exchange for receiving title to one of the properties. Nor is there argument or evidence that any of the children promised performance of some task in exchange for the property. Based on this argument, the Appellants have failed to show that consideration was given in exchange for title to Ruth's properties. This leaves only one inference that can be drawn from the facts before us: the transferred properties were gifts.

In accordance with this conclusion, we hold that the execution of the quitclaim deeds was outside the scope of Merribeth's authority under the 1995 Power of Attorney, because the general authority regarding gifts was limited to the amount excluded under §2503(b) of the Internal Revenue Code of 1986, which is ten thousand dollars.[4] Therefore, we affirm the trial court's grant of summary judgment in favor of Robert and the Estate, vesting title to the

properties in the Estate.

Conclusion

Based on our analysis, we hold that Merribeth did not have the authority under the 1995 Power of Attorney to execute the quitclaim deeds, because the properties transferred were gifts exceeding the ten thousand dollar limitation. We therefore affirm the trial court's grant of summary judgment in favor of Robert and the Estate.

Affirmed.

VAIDIK, J., and BARNES, J., concur.

[4] There is no dispute that each parcel of real estate was valued in excess of ten thousand dollars.